



Rhode Island  
Department of Environmental Management

**DIVISION OF FISH AND WILDLIFE**

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**Public Hearing Summary Document**

**January 25, 2007 at 6 PM**

**URI Narragansett Bay Campus**

**Corless Auditorium**

- 1) Proposed changes to the lobster effort control plan
- 2) Proposed changes to the spiny dogfish state management plan
- 3) Proposed changes to the scup winter 2 sub period starting possession limit
- 4) Proposed change to the black sea bass escape vent size
- 5) Proposed changes to the horseshoe crab management plan

The public has been afforded the opportunity to comment on the proposals contained in this document at the public hearing scheduled for Thursday, January 25, 2007 (6 PM) at the URI Narragansett Bay Campus, Corless Auditorium or by submitting written comments to the Division of Fish and Wildlife, 3 Fort Wetherill Road, Jamestown, RI 02809 no later than 12:00 p.m. on January 25, 2007. Underlined and bold font indicates new language and crossed out font denotes existing language proposed for elimination.

**1) Proposed changes to the lobster effort control plan**

**The following restructured sections will replace the sections in 15.14.2, as they currently exist.**

**15.14.2 – Area 2 Lobster Trap Effort Control Program**

**15.14.2-1 – Purpose**

**This program is promulgated in order to bring the State of Rhode Island into compliance with Addendum VII to Amendment 3 to the Interstate Fishery Management Plan for American Lobster, as adopted by the Atlantic States Marine Fisheries Commission (ASMFC) in November 2005. The purpose of the program to help achieve a healthy and sustainable lobster resource in Area 2 by capping effort at 2001-2003 levels, and establishing a mechanism for future adjustments in effort in response to changes in resource status.**

**15.14.2-2 – Definitions**

**As used in this (15.14.2) section:**

**Adjusted Area 2 Lobster Trap Allocation (LTA) – means an increase or decrease in an individual Area 2 LTA resulting from a Department-sanctioned transfer of traps from one individual to another.**

Area 2 – means Lobster Conservation Management Area 2, as delineated in Amendment 3, Appendix 1 to the Interstate Fishery Management Plan for American Lobster, adopted by the ASMFC in December 1997.

Area 2 Lobster Trap Allocation (LTA) – means the maximum number of lobster traps authorized to be fished by an individual permit or license holder in Lobster Conservation Management Area 2.

Department – means the Rhode Island Department of Environmental Management

Fishing Performance – means properly documented commercial lobster fishing activity – namely pounds landed and traps fished -- in Area 2 during the applicable qualifying period.

Initial Area 2 LTA – means the initial (maximum) number of lobster traps authorized to be fished by an individual permit or license holder in Lobster Conservation Management Area 2 in 2007.

Logbook Report – means the RI Catch and Effort Logbook that is provided to all RI commercial fishing license holders who are authorized to fish commercially for lobster, and which must be filed with the Department by any fisher who does not report his/her landings to NMFS via VTRs.

Material Incapacitation – means a verifiable event beyond the control of the license/ permit holder, such as a medical condition, that adversely affected his/her fishing performance during the three-year period 2001-2003, inclusive. Military service performed during the three-year period 2001-2003 also constitutes material incapacitation. Other than a decision to serve in the military, material incapacitation can not involve a choice by the license/permit holder to pursue other interests; or to a short-term illness or injury that would not have incapacitated a person for the three qualifying years.

NMFS – means the National Marine Fisheries Service

*Qualifying Period – means the entire three-year period from January 1, 2001 through December 31, 2003. For individuals meeting the standards governing material incapacitation, the qualifying period means the entire two-year period from January 1, 1999 through December 31, 2000.*

Vessel Trip Report – means the NMFS report that must be filed with NMFS by all federal permit holders except those who fish exclusively commercially for lobster.

#### 15.14.2-3 – Authorization to Fish Commercially for Lobsters in Area 2

- (a) After May 1, 2007, no person may possess lobsters taken by lobster traps in Area 2 unless they are authorized to do so pursuant to an Area 2 LTA issued by the Department.
- (b) After May 1, 2007, no person may employ more lobster traps in Area 2 than the maximum number authorized by their Area 2 LTA.
- (c) Recreational (non-commercial) lobster trap license holders are exempt from the Area 2 LTA process, and associated provisions, set forth herein.

#### 15.14.2-4 – Trap Allocation Authority

- (a) The Department, through the Division of Fish and Wildlife, shall be the Area 2 LTA authority for all Rhode Island residents, both state-licensed and federally permitted.
- (b) The Department shall process all Area 2 LTA applications from Rhode Island residents, and shall determine Area 2 LTAs for all eligible applicants.

- (c) For resident applicants who are dual state-license/federal-permit holders, the Department shall forward all proposed Area 2 LTAs, and the basis for each such determination, to NMFS for that agency's consideration, prior to final issuance.
- (d) The Department and NMFS shall seek to ensure that dual state-license/federal permit holders do not receive duplicate Area 2 LTAs from different jurisdictions for the same fishery performance.
- (e) If there is a discrepancy between Department- and NMFS-proposed Area 2 LTAs for a dual state-license/federal permit holder, then the license/permit holder is bound by the lesser of the two Area 2 LTAs until a final, joint determination is rendered by the agencies.

#### 15.14.2-5 – Issuance of Area 2 LTAs

- (a) Initial Area 2 LTAs will only be issued to qualified applicants in accordance with subsection 15.14.2-6.
- (b) Adjustments to initial Area 2 LTAs, and issuances of new Area 2 LTAs, may occur, by rule, if associated with Department-sanctioned transfers, or if warranted or required by changes in Area 2 lobster stock assessments or other ASMFC actions.

#### 15.14.2-6 – Qualifications for Initial Area 2 LTAs

- (a) To be eligible for an initial Area 2 LTA, an applicant:
  - (i) Must have held a Department-issued commercial fishing license, authorizing the individual to fish commercially for lobster, or a federal lobster permit endorsed for Area 2, at some point during the period 2001-2003; and
  - (ii) Must have documented fishing performance during the period 2001-2003, i.e., must have landed lobsters with traps from Area 2 at some point during that period; or if unable to do so due to material incapacitation, pursuant to the provisions set forth in section 15.14.2-8, must have documented fishing performance during the period 1999-2000 and during the year 2004, i.e., must have landed lobsters with traps from Area 2, with a valid license/permit, at some point during those periods; and
  - (iii) Must have renewed his/her license/permit annually since 2003.
- (b) Alternatively, an applicant is eligible for an initial Area 2 LTA if he/she has:
  - (i) Lawfully acquired a federal lobster permit that comports with the above-specified qualifications; or
  - (ii) Acquired the vessel and gear of a RI license holder who meets the above-specified qualifications, and has been issued a new license with a lobster endorsement, in accordance with the provisions of section 6.7-8 of the *Rules and Regulations Governing the Management of Marine Fisheries*.
- (c) Documented fishing performance shall be based upon a license/permit holder's logbook reports and/or federal VTRs pertaining to the applicable qualifying period. In accordance with subsection 15.14.2-10, the Department will consider other information, offered by the applicant, but only if it pertains to documentation already furnished to a state or federal government agency.

#### 15.14.2-7 – Application for Initial Area 2 LTA

To obtain an initial Area 2 LTA, individuals must apply to the Department, on forms provided by the Department, by February 1, 2007.

Separate applications must be submitted for each Area 2 LTA being sought.

If an applicant seeks consideration pursuant to the material incapacitation provisions set forth in section 15.14.2-8, the applicant must submit the appropriate documentation along with his/her application.

(d) The Department shall notify each Area 2 LTA applicant, in writing, regarding the applicant's initial Area 2 LTA, noting the values used in making the determination, or the reason(s) why the application was denied.

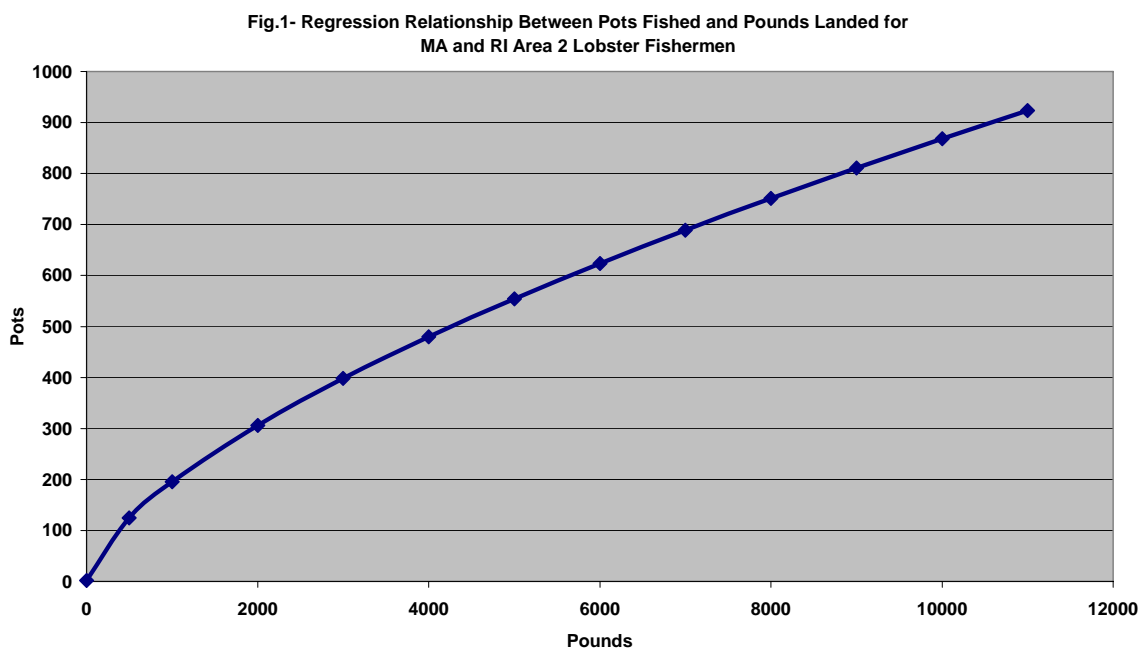
#### 15.14.2-8 – Material Incapacitation

- (a) An individual who meets the qualifying criteria set forth in sections 15.14.2-6(a) (i) and (iii), but had no documented, or had reduced, fishing performance during the three-year period 2001-2003, inclusive, due to material incapacitation, as specified in section 15.14.2-2 herein, and as further described below, may request that his/her initial Area 2 LTA be based on his/her fishing performance in Area 2 during the period 1999-2000.
- (b) In order to establish material incapacitation on the basis of a medical condition, an applicant must present the following notarized documentation, which may pertain to the applicant or to the applicant's family member, i.e., a parent, spouse, child, mother-in-law, or father-in-law:
  - (i) Evidence that the applicant or family member had a physical or mental impairment during the period 2001-2003, inclusive, involving inpatient care in a hospital, a nursing home, or a hospice, or outpatient care requiring continuing treatment or supervision by a health care provider; and
  - (ii) Evidence that the applicant or family member received, during the period 2001-2003, inclusive, social security disability benefits (SSDI), and/or supplemental security income benefits (SSI), and/or 100 percent disabled benefits from the U.S. Department of Veteran Affairs; and
  - (iii) If the material incapacitation involves a family member, evidence that the applicant had a direct role in the care of the family member.
- (c) In order to establish material incapacitation on the basis of military service, an applicant must present appropriate documentation (namely, Form DD214) establishing that he/she served, for one hundred eighty (180) or more days during the years 2001-2003, either on active duty in the U.S. Army, Navy, Air Force, Marines, or Coast Guard, or as a member of a national guard or reserve component of the same, activated by order of an appropriate state or federal authority.
- (d) Applicants seeking consideration under this section may be required to submit additional information, as deemed necessary by the Department, in order to establish eligibility pursuant to this section.
- (e) The Department will review all documentation submitted by applicants seeking consideration under this section, and shall render a decision, in writing, regarding each applicant's eligibility pursuant to this section. On the basis of that decision, the Department shall notify each applicant, in writing, regarding the applicant's initial Area 2 LTA, noting the values used in making the determination, or the reason(s) why the application was denied.

#### 15.14.2-9 – Determination of Initial Area 2 LTAs

For each qualified applicant, the Department shall determine initial Area 2 LTAs as follows:

- (a) “Predicted Traps Fished” values shall be calculated for 2001, 2002, and 2003 from the applicant’s total lobster landings in each of those years using the established regression relationship for Area 2 [see Figure 1]



- (b) “Reported Traps Fished” values, constituting the maximum sustained number of lobster traps reported fished in Area 2 for 2001, 2002, and 2003, shall be obtained from the applicant’s logbook reports and/or federal Vessel Trip Reports (VTRs).
- (c) “Effective Traps Fished” values shall be determined by comparing the “Predicted Traps Fished” and “Reported Traps Fished” values for each of the three years, and identifying the lower value for each year.
- (d) The initial Area 2 LTA is determined by selecting the highest value of the three annual “Effective Traps Fished” values.
- (e) No initial Area 2 LTA shall exceed 800 traps.
- (f) For applicants who qualify for consideration in accordance with the material incapacitation provisions set forth in section 15.14.2-8, the Department shall determine initial Area 2 LTAs pursuant to subsections (a) through (e) above, except that the years 1999 and/or 2000 will be used in lieu of the years 2001, 2002, and 2003.

#### 15.14.2-10 – Corrections to or Revocations of Area 2 LTAs

- (a) A recipient of an Area 2 LTA may request, and the Department may make, corrections to qualifying data if errors are found attributable to data entry or mathematical errors in logbook or landing reports or any other mistakes by the Department.

- (b) A recipient of an Area 2 LTA may request, and the Department may make, corrections to qualifying data based on additional documentation, provided by the applicant, that reflects catch (landings) or effort (traps fished) data/information differing from the applicant's logbook or VTR reports. To be considered eligible for review, such documentation must have been previously furnished to a state or federal government agency . Such additional information may include: trap tag orders; state report cards; state vessel interview forms; state license application forms; state sea sampling observer reports, and catch reports; federal fishing trip reports (NOAA form 88-30); federal port agent vessel interview forms (NOAA Form 88-30); federal sea sampling observer reports; federal fishing vessel and gear, or damage compensation fund reports (NOAA Form 88-176); personal vessel logbooks; sales receipts or landing slips; and/or tax returns.
- (c) Requests made pursuant to subsections (a) and (b) above must be made in writing to the Department and must be accompanied by all supporting information/ documentation. The Department shall respond to all such requests, in writing, within thirty (30) days of receipt.

The Department may make corrections to any initial Area 2 LTA if it is determined that the applicant or recipient did not purchase and use valid lobster trap tags for any period used in determining the initial Area 2 LTA; or if it is determined that the applicant or recipient submitted inaccurate data/information/documentation relating to the determination of his/her Area 2 LTA.

The Department may temporarily or permanently revoke any Area 2 LTA if the applicant or recipient is found to have submitted fraudulent data/information/ documentation relating to the determination of his/her Area 2 LTA.

Any actions or decisions made by the Department pursuant to subsections (d) or (e) above shall be issued in writing.

#### 15.14.2-11 – Disputes and Appeals

- (a) Upon the issuance of a written decision by the Department regarding an initial, corrected, or revoked Area 2 LTA, an applicant may appeal the decision by submitting a written request for an adjudicatory hearing with the clerk of the RIDEM Administrative Adjudication Division, 235 Promenade Street, Providence, RI 02908. Such a request must be submitted by the applicant to the RIDEM Administrative Adjudication Division within thirty (30) calendar days of receipt of the Department's written decision.
- (b) During the time period from which an appeal has been filed, and until a final determination has been rendered by the AAD, the appellant shall be restricted to fishing his/her initial or corrected Area 2 LTA, as set forth by the Department.

#### 15.14.2-11 – Transfers of Area 2 LTAs

##### Pending

[Purpose: To allow for transferability of initial Area 2 LTAs among permit holders, resulting in Adjusted Area 2 LTAs.]

## **2) Proposed changes to the spiny dogfish state management plan**

### **7.15 Spiny dogfish**

**7.15.1 Commercial Season and Possession Limits** – The commercial season shall extend from May 1 until April 30 of the following year and shall be divided

into two semi annual periods. It shall be unlawful to possess aboard or land from a vessel, in any one calendar day, more than ~~600~~ 2,000 pounds of spiny dogfish during the period May 1 through October 31 and ~~300~~ 2,000 pounds of spiny dogfish during the period November 1 through April 30. When notified that the quota in any given period has been harvested, as determined by the National Marine Fisheries Service or the Atlantic States Marine Fisheries Commission, the Division of Fish and Wildlife shall file a notice with the Office of the Secretary of State prohibiting the commercial landings, harvest and possession of spiny dogfish in state waters for the remainder of the designated period and publish a news release announcing the closure in a newspaper of daily circulation throughout the State.

3) Proposed changes to the scup winter 2 sub period starting possession limit

The Department requests that interested members of the public offer comment in the manner described in the Public Notice published in the Providence Journal on December 25, 2006 relative to the issue of whether, and if so how, Part 7.11.2 should be amended concerning the landing and possession limit authorized during the Winter II Sub period. The Department is only able to provide this summary of the issues to be addressed as opposed to a statement of the intended action given that the National Marine Fisheries Service has not, at the time of the writing of this summary, set the possession limit for scup for 2007 which will be available to Rhode Island during the Winter II Sub period.

4) Proposed change to the black sea bass escape vent size

11.12.2 Trap Construction - Escape Vents -- All scup traps (pots) must be constructed with escape openings. Openings may be circular, rectangular, or square, and must be a minimum of 3.1" diameter, 2-1/4" X 5-3/4" if rectangular or may be constructed of 2-1/4" X 2-1/4" wire mesh. Escape vents must be attached with biodegradable fasteners which allow vents or panels to fall away from the trap after loss.

All black sea bass traps (pots) must be constructed with two escape openings in the parlor portion of the trap. Openings may be circular, rectangular, or square, and must be a minimum of ~~2-3/8"~~ 2.5" in diameter if circular, 1- 3/8" X 5-3/4" if rectangular, 2"X 2" if square. Escape vents must be attached with biodegradable fasteners which allow vents or panels to fall away from the trap after loss.

The hinges or fasteners of one panel or door must be made of one of the following degradable materials.

- (a) untreated hemp, jute, or cotton string 3/16" (4.8mm) or smaller;
- (b) magnesium alloy, timed float releases (pop-up devices) or similar magnesium alloy fasteners;
- (c) ungalvanized or uncoated iron wire of .094" (2.4mm) or smaller.

If "bungee" cord or other elasticized material is used to fasten the top, it must be secured to the trap with a degradable hog ring.

5) Proposed changes to the horseshoe crab management plan

**15.24 Horseshoe Crabs** – It is illegal for any person to harvest horseshoe crabs, Limulus polyphemus, in Rhode Island for commercial purposes without a ~~multi-purpose valid~~ commercial marine fishing license and a Horseshoe Crab Harvest Permit; or to harvest horseshoe crabs for recreational purposes without a Horseshoe Crab Harvest Permit.

**15.24.1 Harvest Permit** – Persons harvesting horseshoe crabs from the shoreline or waters in the State of Rhode Island must apply for a Horseshoe Crab Harvest Permit from the Division of Fish and Wildlife. A Horseshoe Crab Harvest Permit is required for all harvesters of horseshoe crabs. Horseshoe Crab Harvest Permits shall be valid only for the calendar year of issuance. The conditions of the permit requires a weekly report of landings either by telephone or in writing. In addition, a monthly report in writing is required on forms furnished by the Division of Fish and Wildlife. The report must include the number of crabs taken, locations of harvest, and use (bait, biomedical purposes, or other reasons). These reports shall not be made public and shall be kept only for statistical purposes. Failure to report will result in forfeiture of the Harvest Permit and/or revocation of license and permit as provided for in RIGL 20-4-5.

**15.24.2 Quota** – A total allowable harvest (quota) of horseshoe crabs for the bait fishery and biomedical industry will be established annually. The quota will be the amount allocated to the State of Rhode Island by the Atlantic States Marine Fisheries Commission (ASMFC) or as determined by the R.I. Division of Fish and Wildlife based on the current stock status. The quota may only be harvested by licensed, permitted commercial fishermen in accordance with all rules and regulations promulgated by the ~~Rhode Island Marine Fisheries Council or the~~ Rhode Island Department of Environmental Management.

**15.24.3 Possession**

**Commercial – Bait and biomedical fishery** – Any person issued a ~~multi-purpose valid~~ commercial marine fishing license and Horseshoe Crab Harvest Permit may possess horseshoe crabs in numbers not to exceed the established annual quota. Horseshoe crabs employed in the biomedical industry for purposes of extracting bodily fluids shall be returned to the waters from which they came within 72 hours following the completion of the intended biomedical procedure. ~~For the year 2001 the Department has established a quota of 14,655 crabs for the bait fishery and 34,194 crabs for the biomedical industry.~~